

ESTTA Tracking number: **ESTTA662627**

Filing date: **03/23/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	James G. Cafarelli		
Entity	Individual	Citizenship	UNITED STATES
Address	15 Cherokee Road Canton, MA 02021 UNITED STATES		

Correspondence information	James G. Cafarelli 15 Cherokee Road Canton, MA 02021 UNITED STATES michael@rustickitchen.biz
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Applicant Information

Application No	86234051	Publication date	02/24/2015
Opposition Filing Date	03/23/2015	Opposition Period Ends	03/26/2015
Applicant	Free Range Presents Dallas, LLC 3656 Howell Street Dallas, TX 75204 UNITED STATES		

Goods/Services Affected by Opposition


Class 043. First Use: 2013/10/10 First Use In Commerce: 2013/10/10 All goods and services in the class are opposed, namely: Restaurant and bar services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4253386	Application Date	04/09/2012
Registration Date	12/04/2012	Foreign Priority Date	NONE
Word Mark	RUSTIC KITCHEN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2001/09/01 First Use In Commerce: 2001/09/01 Entertainment, namely, a continuing cooking show and cooking instruction show broadcast over television, internet, and radio; educational demonstrations in the field of cooking; presentation of live cooking show performances Class 043. First use: First Use: 2001/09/01 First Use In Commerce: 2001/09/01 Restaurant and catering services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services

Attachments	85592654#TMSN.png(bytes) Notice of Opposition.pdf(14428 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jim Cafarelli/
Name	James G. Cafarelli
Date	03/23/2015

I oppose the registration due to the high likelihood of confusion with the mark in U.S. Registration No. 4253386. Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d).

1. The similarity of the marks is very high, both focus on the word “Rustic”.
2. The similarity and nature of the goods and/or services is high, both are restaurants and bars.
3. The similarity of the trade channels of the goods and/or services is high, both use a combination of sit-down service and take-out in a dining room, bar and outdoor patio setting.
4. The parties’ marks are highly similar overall. Both contain the identical term RUSTIC as the dominant portion of the mark. The term KITCHEN in the registered has been disclaimed; thus this term is less significant in terms of affecting the mark's commercial impression, and renders the word RUSTIC the more dominant element of the mark.
 - a. When comparing similar marks, the Trademark Trial and Appeal Board has found that inclusion of the term “the” at the beginning of one of the marks will generally not affect or otherwise diminish the overall similarity between the marks. *See In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (finding WAVE and THE WAVE “virtually identical” marks; “[t]he addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance.”); *In re Narwood Prods. Inc.*, 223 USPQ 1034, 1034 (TTAB 1984) (finding THE MUSIC MAKERS and MUSIC-MAKERS “virtually identical” marks; the inclusion of the definite article “the” is “insignificant in determining likelihood of confusion”).
5. The identification of services in the registration includes “Restaurant and catering services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services.” The identification of services in this application is “Restaurant and bar services”.

I strongly believe registration of the applicant’s mark will create buyer confusion as to the source of the goods and/or services and cause me adverse commercial impact.

Sincerely,

James G. Cafarelli